

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY B.COM, B.L. (HONS.),
VINUPRIYA MUTHURAMALINGAM, B.A., L.L.B. (HONS.)

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **Queriest :**

M/s. Eureka Forbes Limited,
"Anmol Palani", 4th Floor,
No.88, G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

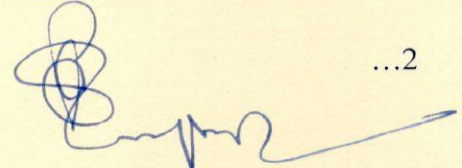
2. **Facts :**

The queriest, among other things, imports various models of split air conditioners with refrigerants. It is reported that they are clearing these under Heading 8415 1010 of the Schedule to the Customs Tariff Act. On 15.10.2020 DGFT has issued Notification No.41/2015-2020 prohibiting import of air conditioners with refrigerants classifiable under Headings 8415 1010 and 8415 1090.

3. **Query :**

In this connection, the queriest seeks clarification on the following:

- i. If it is with immediate effect; then what about consignments in pipeline – under clearance / High seas / about to sail and in order for which advance payment or LC opened – How to handle / import and clear them.
- ii. If it is not with immediate effect; whether its effective date of implementation and even in this case; the situation for the above pipeline cargo if they cross that effective date.
- iii. The difference between the ACs of 8415 1010 / 8415 1090 and 8415 82 (sub heading 8415 8210 / 8415 8290) of Customs Tariff.
- iv. Whether this prohibition does not apply to ACs already in Bond as many consignments were kept in Public Bonded warehouse.

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4. **Opinion :**

- 4.1 Notification dated 15.10.2020 issued in terms of Section 3 of Foreign Trade (Development & Regulation) Act 1992 will come into force with immediate effect. Any notification issued will have immediate effect unless it is specifically stated in the notification that it is to take effect from a later date.
- 4.2 Once these goods are prohibited for import then, it will have an impact on the goods already shipped or pending shipment. Therefore, for removing difficulties in that regard, transitional arrangements are provided for in the policy. Para.1.05 of the Policy covering 'transitional arrangements' reads as follows:

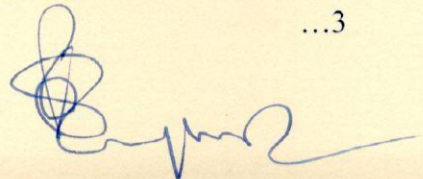
“(a) Any License/Authorisation/Certificate/Script/instrument bestowing financial or fiscal benefit issued before commencement of FTP, 2015-20 (as updated) w.e.f. 5-12-2017 shall continue to be valid for the purpose and duration for which it was issued, such License/Authorisation/Certificate/Script/any instrument bestowing financial or fiscal benefit Authorisation was issued, unless otherwise stipulated.

(b) Item wise Import/Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/exportability of a particular item is governed by the policy as on the date of import/export. The date of import/ export is defined in para 2.17 of HBP, 2015-20. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from free to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made **before** the date of such regulation/restriction will not be affected. However the import through High Sea sales will not be covered under this facility.

Further, the import/export **on or after** the date of such regulation/restriction will be allowed for importer/exporter has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operationalising such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/regulation.

Whenever, Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for.”

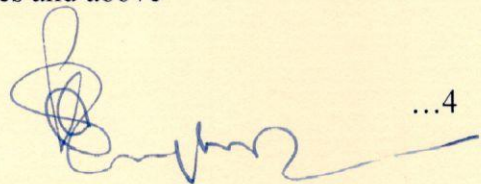
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- 4.3 In the light of the above, it may be noted that goods already shipped can be cleared without any difficulty. However, in respect of goods which are yet to be shipped, if there is a firm commitment by way of Irrevocable Commercial Letter of Credit, then, the balance quantity to be shipped in terms of such commitments can be imported. The policy provides that for operationalising such Irrevocable Commercial Letters of Credit, the letters of credit should be registered with the jurisdictional authority against computerized receipts within 15 days from the date of imposition of such restriction. Thus, if the querist has already made commitments in this manner, then, the relevant Letters of Credit are to be registered with the authorities concerned on or before 30th October 2020. With regard to advance payments, there is no specific provision. However, that will be better than L.C. and the querist can register the purchase order and payment details with DGFT authorities.
- 4.4 It is also to be noted that goods already imported and kept in the Customs Bonded warehouses will not get affected because of this policy change as the goods have been shipped and arrived in India before the prohibition was notified.
- 4.5 With regard to the type of air conditioners prohibited, it will be useful to refer to the whole tariff structure under 8415, which is reproduced below:

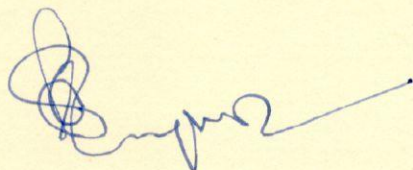
8415 Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated

- 8415 10 - *Of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or "split-system" :*
- 8415 10 10 --- Split system
- 8415 10 90 --- Other
- 8415 20 - *Of a kind used for persons in motor vehicles :*
- 8415 20 10 --- For buses
- 8415 20 90 --- Other
- *Other :*
- 8415 81 -- *Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps) :*
- 8415 81 10 --- Split air-conditioner two tonnes and above
- 8415 81 90 --- Other
- 8415 82 -- *Other, incorporating a refrigerating unit :*
- 8415 82 10 --- Split air-conditioner two tonnes and above
- 8415 82 90 --- Other
- 8415 83 -- *Not incorporating a refrigerating unit :*
- 8415 83 10 --- Split air-conditioner two tonnes and above
- 8415 83 90 --- Other
- 8415 90 00 - Parts



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- 4.6 From the above, it can be seen that at six-digit level under "8415 10", air conditioners designed to be fixed to a window, wall, ceiling or floor are covered. Under this heading, self-contained as well as split systems will get covered. 8415 20 covers air conditioners meant for personal comfort in motor vehicles. From 8415 81 onwards other types of air conditioners are covered. 8415 81 covers air conditioners incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle. 8415 82 covers air conditioners incorporating a refrigerating unit. 8415 83 covers air conditioners not incorporating a refrigerating unit. In this connection, the Explanatory Notes to HSN under Heading 8415 is attached, which will be self-explanatory.
- 4.7 It may be noted that though there is change in temperature involved in air conditioning as well as refrigeration, the role and function of air conditioning is different that that of refrigeration. Thus, though the same principle is used, the purposes of refrigeration and air conditioning are not identical.
- 4.8 Now what is prohibited are air conditioners, both self contained as well as split type, which are designed to be fixed to a window, wall, ceiling or floor when they are imported with the refrigerant inside. Without refrigerants the above air conditioners can still be imported. Thus, it can be seen that the prohibition now imposed is limited to these two types of air conditioners with refrigerants.



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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.